

PUBLIC BODY EQUALITY DUTIES

	<u>Race</u>	<u>Disability</u>	<u>Gender</u>
Law	<p><i>s.71(1), Race Relations Act 1976</i></p> <p>(1)Every body or other person specified in Schedule 1A or of a description falling within that Schedule shall, in carrying out its functions, have due regard to the need—</p> <p>(a)to eliminate unlawful racial discrimination; and</p> <p>(b)to promote equality of opportunity and good relations between persons of different racial groups.</p>	<p><i>s.49A, Disability Discrimination Act 1995</i></p> <p>(1) Every public authority shall in carrying out its functions have due regard to—</p> <p>(a) the need to eliminate discrimination that is unlawful under this Act;</p> <p>(b) the need to eliminate harassment of disabled persons that is related to their disabilities;</p> <p>(c) the need to promote equality of opportunity between disabled persons and other persons;</p> <p>(d) the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons;</p> <p>(e) the need to promote positive attitudes towards disabled persons; and</p> <p>(f) the need to encourage participation by disabled persons in public life.</p>	<p><i>s.76A, Sex Discrimination Act 1975</i></p> <p>(1)A public authority shall in carrying out its functions have due regard to the need—</p> <p>(a)to eliminate unlawful discrimination and harassment, and</p> <p>(b)to promote equality of opportunity between men and women.</p>

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Date in force	April 2001	December 2006	April 2007
Code of practice	Statutory Code of Practice on the duty to promote racial equality	The duty to promote disability equality: Statutory Code of Practice - England and Wales	Gender equality duty: Code of Practice for England and Wales (Statutory Code)
	Codes of practice available from the EHRC's website: www.equalityhumanrights.com		
Which public authorities?	All public authorities as listed in schedule 1A, RRA (s.71(1) RRA 1976)	All public authorities (no list), and also organisations that exercise some functions of a public nature (s.49B DDA 1995; Code of Practice, 5.1 – 5.11)	All public authorities (no list); “any person who has functions of a public nature” (Code of Practice, 1.26)
Which functions?	Functions that affect, or are likely to affect, the public or a section of the public; (RED CoP glossary page 5)	The full range of a public authority's duties and powers; (see DED CoP glossary page 169)	No definition but can rely on those used in race and disability.
“Due regard to the need to....”	<p>Having due regard means that the weight given to the need to promote [race/disability/gender] equality is proportionate to its relevance to a particular function.</p> <p><i>“What is due regard? In my view it is the regard that is appropriate in all the circumstances. These include on the one hand the importance of the areas of life of the members of the disadvantaged racial group that are affected by the inequality of opportunity and the extent of the inequality; and on the other hand, such countervailing factors as are relevant to the function which the decision-maker is performing.”</i></p> <p>(Lord Justice Dyson in R(Baker and ors) v Secretary of State for Communities and Local Government)</p>		

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Specific duties – the equality schemes	<p>Equality schemes must set out how the public authorities intend to meet their statutory duties.</p> <p>Failure to meet a specific duty can be used as evidence of breach of general duty.</p> <p>Only some public authorities required to meet the specific duties (in contrast to general equality duties which must be met by all public authorities – see above).</p>		
Public auths SDs apply to	See list in Appendix 2 of Code of Practice.	See list in Appendix A of Code of Practice.	See list in Appendix D of Code of Practice.
Relevant regulation	<u><i>The Race Relations Act 1976 (Statutory Duties) Order 2001</i></u>	<u><i>The Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005</i></u>	<u><i>The Sex Discrimination Act 1975 (Public Authorities) (Statutory Duties) Order 2006</i></u>
Content of equality schemes and how specific duties work	<p>Race Equality Scheme (to be completed by 31 May 2002 and reviewed every three years) must include:</p> <ul style="list-style-type: none"> its functions and policies that the public body has assessed as relevant to its duty to promote race equality; the public body's arrangements 	<p>Disability Equality Scheme (to be completed by December 2006 and reviewed after three years including report on steps taken to meet action plan and results of information-gathering) must include:</p> <ul style="list-style-type: none"> how disabled people have been involved in its development the steps the public authority will 	<p>Gender Equality Scheme (to be completed by 30 April 2007 and actions implemented within 3 years, reviewed and revised every 3 years, reported on annually) and must include:</p> <ul style="list-style-type: none"> consultation with service users and others must taken into account

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	<p>for:</p> <ul style="list-style-type: none"> ○ assessing and consulting on the likely impact of its proposed policies on the promotion of race equality ○ monitoring its policies for any adverse impact on the promotion of race equality ○ publishing the results of assessments and consultations ○ ensuring public access to information and services it provides ○ training staff in connection with the general race equality duty. 	<p>take to meet the DED (its “action plan”)</p> <ul style="list-style-type: none"> • how the public authority will assess the impact (or likely impact) of its (proposed) policies and practices on disabled people • how the public authority will gather information on the delivery of its functions • how the public authority will use the information it has gathered 	<p>information it has gathered or considers relevant as to how its policies and practices affected gender equality in the delivery of its services</p> <ul style="list-style-type: none"> • actions to gather information on the effect of its policies and practices on women • actions to use information to review the implementation of its objectives • how the public authority will assess the impact of its policies and practices on gender equality • how it will consult service users and others • and how it will ensure implementation of its objectives
Impact assessments	Each scheme must include details of the public authority’s arrangements for assessing impact of policies on equality, as follows:		

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Specific EIA points	Assessing and consulting on the likely impact of its proposed policies on the promotion of race equality; monitoring its policies for any adverse impact on the promotion of race equality; (Reg 2(2); see Code of Practice page 24).	How the public authority will assess the impact – or likely impact – of its (proposed) policies and practices on disability equality; (Reg 2(3)(b); see Code of Practice page 65).	Assess the impact of its policies and practices on gender equality (Reg 1 (1); see Code of Practice page 37).
General EIA points	<p>Is there adverse impact on race/disability/gender equality?</p> <p>Is it justified?</p> <p>If not, what scope for elimination or reduction of adverse impact?</p>		

Louise Whitfield, Public Law Project, January 2009

Equality Act 2010 – received Royal Assent on 8 April 2010; this introduces a generic public sector equality duty in relation to the exercise of public authority functions that is similar to the duties outlined above in terms of having due regard to the need to eliminate discrimination and harassment, to advance equality of opportunity and foster good relations between groups – but with a wider range of “protected characteristics”. The protected characteristics are extended to include age, gender-reassignment, pregnancy and maternity, religion or belief and sexual orientation. The timetable for commencement is understood to be October 2010, with the new government expected to maintain the new Act except for the equal pay auditing duties.

Louise Whitfield, Pierce Glynn Solicitors, June 2010